

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**AT NASHVILLE, TENNESSEE**

**November 16, 2001**

**IN RE:**

**NOTICE OF US LEC CORP OF A "BONA  
FIDE REQUEST" FOR AN INTERCONNECTION  
AGREEMENT WITH THE TDS LOCAL  
EXCHANGE CARRIERS PURSUANT TO  
47 U.S.C. SECTION 251**

**DOCKET NO. 00-00026**

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**ORDER ESTABLISHING PROCEDURAL SCHEDULE**

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On January 14, 2000, US LEC Corp. ("US LEC") filed with the Tennessee Regulatory Authority (the "Authority" or "TRA") notification, pursuant to 47 U.S.C. § 251(f)(1), of its "bona fide request" for interconnection with four local exchange carriers in Tennessee owned by TDS TELECOM. Pending before the Authority at the time of US LEC's notification was TRA Docket No. 99-00613, the Petition of the Tennessee Small Local Exchange Company Coalition (the "Coalition") for Temporary Suspension of 47 U.S.C. §§ 251(b) and 251(c) pursuant to 47 U.S.C. §§ 251(f) and 253(b). The TDS TELECOM companies were a part of the Coalition.<sup>1</sup> US LEC's notification and the subsequent filings related thereto were filed in TRA Docket No. 00-00026. On January 21, 2000, the TDS TELECOM companies, consisting of Concord Telephone Exchange, Tennessee Telephone Company, Tellico Telephone Company and Humphreys County Telephone Company, filed a Motion to Suspend US LEC's "bona fide request." In that Motion,

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<sup>1</sup> The Coalition consists of the following members: Ardmore Telephone Companies, Inc., Century Telephone Enterprises, Inc., CenturyTel of Adamsville Inc., CenturyTel of Claiborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc., Loretto Telephone Company, Inc., Millington Telephone Company, Inc., TDS TELECOM companies in Tennessee consisting of Concord Telephone Exchange, Tennessee Telephone Company, Tellico Telephone Company, Humphreys County Telephone Company (collectively the "TDS local exchange carriers"), the

the TDS TELECOM companies asked that the request of US LEC and "all similar requests be suspended pursuant to 47 U.S.C. §251(f)(2) until final action on the petition filed by the Coalition in Docket No. 99-0613."<sup>2</sup>

At a Pre-Hearing Conference held on March 17, 2000 in TRA Docket No. 99-00613, the parties, which included US LEC, discussed the potential effect of a decision on the Coalition's Petition in that docket upon US LEC's request for interconnection in TRA Docket No. 00-00026. The parties agreed that a decision in Docket No. 99-00613 resulting in a suspension of the requirements for interconnection set forth in 47 U.S.C. § 252 would act as a suspension of US LEC's request. During this discussion, counsel for US LEC stated further that a determination of the Coalition's Petition in Docket No. 99-00613 would likely determine whether or not US LEC would proceed with its request filed in TRA Docket No. 00-00026. The parties reached an agreement that US LEC's request in Docket No. 00-00026 would be held in abeyance pending a determination of the Coalition's petition for suspension in Docket No. 99-00613.<sup>3</sup>

On November 6, 2001, the Coalition filed in Docket No. 99-00613 a Notice of Withdrawal of the Petition in that docket. Pursuant to the agreement of the parties, which included US LEC, a subsequent order,<sup>4</sup> and the Coalition's Notice of Withdrawal, all filed in Docket No. 99-00613, the Pre-Hearing Officer finds that US LEC's request for interconnection in this docket should no longer be held in abeyance.

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Telephone Electronics Corp. ("TEC") companies in Tennessee including Crockett Telephone Company, Inc., Peoples Telephone Company, Inc. West Tennessee Telephone Company, Inc. and United Telephone Company, Inc.

<sup>2</sup> See Motion of "TDS Local Exchange Carriers" to Suspend the Interconnection Request of US LEC Corp. Pursuant to 47 U.S.C. §251(f)(2), TRA Docket No. 00-00026 (January 21, 2000) p. 1.

<sup>3</sup> See Second Report and Recommendation of Pre-Hearing Officer, TRA Docket No. 99-00613 (March 23, 2000) pp. 7-8.

<sup>4</sup> See Order Adopting Second Report and Recommendation of Pre-Hearing Officer, TRA Docket No. 99-00613 (June 29, 2000).

After the filing of the request by US LEC in this docket, the Eighth Circuit Court of Appeals issued its decision in *Iowa Utilities Bd. v. F.C.C.*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000). In that case, the Court made the following statement regarding the sequence of proof in determining whether a bona fide request terminates the exemption of a rural telephone company:


The statute states that the requirements of § 251(c) "shall not apply to a rural telephone company *until*" a request has been made. 47 U.S.C. § 251(f)(1)(A) (emphasis added). The use of the word "until" suggests that the rural telephone companies have a continuing exemption that is only terminated once a bona fide request is made, provided the request is not unduly economically burdensome, is technically feasible, and is consistent with § 254....The plain meaning of the statute requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption.<sup>5</sup>

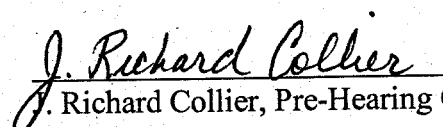
In consideration of the foregoing, the Pre-Hearing Officer hereby establishes the following procedural schedule:

<b>November 26, 2001</b>	TDS Telecom's Responses to US LEC's Request
<b>December 10, 2001</b>	U. S. LEC's Discovery Completed and Direct Testimony Due
<b>January 10, 2002</b>	TDS Telecom's Discovery Completed and Direct and Rebuttal Testimony Due
<b>January 24, 2002</b>	US LEC's Reply Testimony Due

All filings are required to be submitted to the Authority no later than **2:00 p.m.** on the date that they are due.

ATTEST:

  
K. David Waddell, Executive Secretary

  
J. Richard Collier, Pre-Hearing Officer

Date

11/16/01

<sup>5</sup> *Iowa Utilities Bd. v. F.C.C.*, 219 F.3d 744, 762 (8<sup>th</sup> Cir. 2000).